

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 952 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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JASHBHAI C SHETH

Versus

BHUPENDRAKUMAR S VYAS  
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Appearance:

MR AJ PATEL for Petitioner  
MR MC SHAH for Respondent No. 1 and 2  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/03/2000

ORAL JUDGEMENT

#. The petitioner is the defendant against whom the  
respondent had filed the suit being Regular Civil Suit No.  
289 of 1977 in the court of the learned Civil Judge (JD),

Anand for getting possession of the suit premises situated in Anand town on the ground that the premises was let out to the defendant at a monthly rent of Rs. 60/- for residence only. He has changed user of the suit premises from residential premises to business premises and that therefore, he was liable to be evicted.

#. The suit was resisted by the defendant taking contention that the premises was let out for both residential and business purposes and that therefore, there was no question of change of user.

#. The Trial Court after raising necessary issues and after hearing the arguments of the parties came to the conclusion that the suit premises was let out to the defendant for residence and he has started his business in the suit premises. The Trial Court also came to the conclusion that the standard rent of the suit premises was Rs. 60/- p.m. Ultimately on the aforesaid finding of change of user the suit of the plaintiff was decreed by the Trial Court. Said decree for possession was challenged by present petitioner by filing Regular Civil Appeal No. 67 of 1982 before the District Court, Kheda at Nadiad. Said appeal was heard by the learned Extra Assistant Judge, Nadiad who ultimately dismissed the said appeal and confirmed the decree of the Trial Court. The petitioner tenant has filed this revision application against the aforesaid decree of the Appellate Court.

#. I have heard Mr. A.J.Patel for the petitioner and Mr.M.C.Shah for the respondent. It was argued by the petitioner that the suit premises was let out for both residential and business purposes and therefore, there was no question of change of user. It has been found by the Appellate Court in para 9 of his judgment that if really the suit premises was let out for dual purposes, the defendant would have definitely stated the same in his reply at exh.118. It has been found by the Appellate Court that the suit premises is not used for the purpose of residence but the same is used for the purpose of storing fire crackers. It has also been found by the Appellate Court that the defendant has admitted that the suit premises was given to him only for the purpose of residence. It was ultimately found that the defendant was using the suit premises for the purpose of storing fire crackers and therefore using the suit premises only for the purpose of business. Even there is a licence which was produced by the defendant at exh. 134 which is also regarding storing of the fire crackers in the suit

premises. It has been found from the evidence on record that the defendant has shifted his residence at Sarvoday Society and started storing fire crackers in the suit premises and therefore, the Appellate Court rightly came to the conclusion that the suit premises is not used for the purpose of residence and the defendant was using the suit premises for the purpose of storing fire crackers by using the same for the purpose of his business. It is also found that the defendant has also shifted his residence in Sarvoday Society and that present premises which is the suit premises is used only for the purpose of godown. It was therefore, found that there was clear case of change of user. Since the aforesaid finding of the Appellate Court is based on appreciation of evidence, this court cannot reappreciate the evidence while exercising the revisional power. I therefore, do not find any merit in this revision application. Therefore, the same derives to be dismissed and the same is accordingly dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Mr. Patel learned advocate for the petitioner has requested that he may be given some time for vacating the suit premises since the suit premises is being used for the purpose of business. Mr. Patel submitted that the petitioner will have to find out alternative suitable accommodation and in these hard days it is difficult for him to procure alternative accommodation. In the facts and circumstances I grant time upto 30.6.2001 to the petitioner for the purpose of vacating the suit premises on his filing usual undertaking before this court within 6 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit premises to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the respondent no.2 on or before the 30.6.2001. If the petitioner fails to file the undertaking within six weeks from today or if the petitioner commits any breach in the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

(P.B.Majmudar.J)

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